

OCA FILE

RECPT #

27 May 1987

OCA 87-2193

STAT

MEMORANDUM FOR:

FROM:

Office of Congressional Affairs

SUBJECT:

Computer Matching Legislation

1. On 21 May 1987, the Senate passed S.496, the "Computer Matching and Privacy Communication Act of 1987." OMB has now requested that the Agency provide its views on the bill by 29 May 1987. Attached is a copy of the bill for your review.

2. You will recall that last year we objected to a similar bill because it had unintended adverse consequences on intelligence operations involving the matching of computer data. This year, Senator Cohen re-wrote the bill to limit its applicability to matching programs conducted for the purpose of establishing or verifying compliance with statutory or regulatory requirements by applicants, recipients, or beneficiaries under Federal benefit programs. After consulting with [redacted], we agreed that the bill as re-written did not impact adversely on the Agency and so informed OMB.

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3. The bill passed by the Senate is somewhat different than the bill introduced by Senator Cohen earlier this year. The bill passed by the Senate would also cover computer comparisons involving two or more automated federal personnel or payroll systems of records with a set of non-federal records. The bill also explicitly excludes matches performed to produce background checks for security clearances. I do not believe the expanded coverage of the bill would adversely impact on the Agency.

4. I would appreciate receiving any comments you have on the bill by COB 29 May 1987.

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Attachments as stated

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CONGRESSIONAL RECORD — SENATE

May 21, 1987

**COMPUTER MATCHING AND
PRIVACY PROTECTION ACT**

The PRESIDING OFFICER. The clerk will report Calendar Order No. 123.

The legislative clerk read as follows:

A BILL (S. 496) to amend title 5 of the United States Code, to ensure privacy, integrity and verification of data disclosed for computer matching, to establish Data Integrity Boards within Federal agencies and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Governmental Affairs, with an amendment to strike all after the enacting clause and insert in lieu thereof, the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Computer Matching and Privacy Protection Act of 1987".

SEC. 2. MATCHING AGREEMENTS.

(a) **IN GENERAL.**—Subsection (b) of section 552a of title 5, United States Code, is amended—

(1) by striking out "or" at the end of paragraph (11),

(2) by striking out the period at the end of paragraph (12) and inserting in lieu thereof "; or", and

(3) by adding at the end thereof the following new paragraph:

"(13) to a recipient agency or non-Federal matching entity pursuant to a written matching agreement under subsection (c) of this section."

(b) **MATCHING PROGRAMS.**—Section 552a of title 5, United States Code, is amended—

(1) by redesignating subsections (c), (p), and (q) as subsections (r), (s), and (t), respectively, and

(2) by inserting after subsection (n) the following new subsections:

"(o) **MATCHING AGREEMENTS.**—Prior to disclosing any record which is contained in a system of records to a recipient agency or non-Federal matching entity for use in a computer matching program, a source agency and the recipient agency or non-Federal matching entity shall enter into a written agreement specifying—

"(1) the justification, purpose, and legal authority for conducting the program;

"(2) a description of the records that will be matched, including each data element that will be used, the approximate number of records that will be matched, and the projected starting and completion dates of the matching program;

"(3) procedures for notifying upon application and periodically thereafter—

"(A) applicants for and recipients of financial assistance or payments under Federal benefit programs, and

"(B) applicants for and holders of positions as Federal personnel,

that any information provided by such applicants, recipients, and holders may be subject to verification through matching programs;

"(4) procedures for verifying information produced in such matching program as required by subsection (p);

"(5) procedures for retention and destruction of records created by such matching program;

"(6) procedures for ensuring the administrative, technical, and physical security of the records matched and the results of such programs;

"(7) prohibitions on duplication and redisclosure of records provided by the source agency within or outside the recipient

agency or the non-Federal matching entity, unless authorized by the source agency with the terms of the authorization;

"(8) procedures governing the use of the records, provided by the source agency for use in a matching program including procedures governing return to the source agency or destruction of the records used in such program, and

"(9) information on assessments that have been made on the accuracy of the records that will be used in such matching program.

"(p) **VERIFICATION AND OPPORTUNITY TO CONTEST FINDINGS.**—(1) In order to protect any individual whose records are used in matching programs, no recipient agency, non-Federal matching entity, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program to such individual, or take other adverse action against such individual as a result of information produced by such matching programs, until such agency or entity has independently verified such information. Subject to the requirements of this subsection, such independent verification may be satisfied by verification requirements governing such Federal benefit program.

"(2) Independent verification required by paragraph (1) shall include verification of—

"(A) the amount of the asset or income involved,

"(B) whether such individual actually has or had access to such asset or income for such individual's own use, and

"(C) the period or periods when the individual actually had such asset or income.

"(3) No recipient agency, non-Federal matching entity, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program to any individual described in paragraph (1), or take other adverse action against such individual as a result of information produced by a matching program, until such individual has been notified by such agency or entity of its findings and has been given an opportunity to contest such findings. Such opportunity may be satisfied by notice, hearing, and appeal rights governing such Federal benefit program.

"(q) **SANCTIONS.**—Notwithstanding any other provision of law, no source agency may disclose any record which is contained in a system of records to a recipient agency or non-Federal matching entity for a matching program if such source agency has reason to believe that the requirements of subsection (p) and any matching agreement entered into pursuant to subsection (c) are not being met by such recipient agency or entity."

SEC. 3. NOTICE OF MATCHING PROGRAMS.

(a) **NOTICE IN FEDERAL REGISTER.**—Subsection (c) of section 552a of title 5, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (10),

(2) by striking out the period at the end of paragraph (11) and inserting in lieu thereof "; and", and

(3) by adding at the end thereof the following new paragraph:

"(12) If such agency is a recipient agency or a source agency in a matching program with a non-Federal matching entity, with respect to any establishment or revision of a matching program, at least 30 days prior to conducting such program, publish in the Federal Register notice of such establishment or revision."

(b) REPORT TO CONGRESS AND OFFICE OF MANAGEMENT AND BUDGET.

(1) **IN GENERAL.**—Subsection (r) of section 552a of title 5 of this Act, is amended

by striking out "system of records" and inserting in lieu thereof "system of records or matching program".

(2) **CLERICAL AMENDMENT.**—The heading of such subsection (r) is amended by inserting "on Programs" after "Systems".

SEC. 4. DATA INTEGRITY BOARD.

Section 552a of title 5, United States Code, as amended by section 2(b)(1) of this Act, is amended by adding at the end thereof the following new subsection:

"(u) **DATA INTEGRITY BOARD.**—(1) Every agency conducting or participating in a matching program shall establish a Data Integrity Board to oversee and coordinate among the various components of such agency the agency's implementation of this section.

"(2) Each Data Integrity Board shall consist of senior officials designated by the head of the agency, including any senior official designated by the head of the agency as responsible for implementation of this section, and the Inspector general of the agency, if any. The Inspector general shall not serve as chairperson of the Data Integrity Board.

"(3) Each Data Integrity Board shall perform the following functions:

"(A) review, approve, and maintain all written agreements for receipt or disclosure of agency records for matching programs to ensure compliance with subsection (c), and all relevant statutes, regulations, and guidelines;

"(B) review all matching programs in which the agency has participated during the year, either as a source agency or recipient agency, determine compliance with applicable laws, regulations, and agency agreements, and assess the cost-benefits of such programs;

"(C) review all recurring matching programs in which the agency has participated during the year, either as a source agency or recipient agency, for continued justification for such disclosures and for compliance with applicable laws, regulations, and agency agreements, and assess the cost-benefits of such programs;

"(D) compile an annual report to the head of the agency and the Office of Management and Budget on the matching activities of the agency, including—

"(i) matching programs in which the agency has participated as a source agency or recipient agency;

"(ii) matching agreements proposed under subsection (c) that were disapproved by the Board; and

"(iii) the matching of records as a source agency or recipient agency under programs not covered by this section or described in subparagraphs (A) through (E) of subsection (a)(8);

"(E) serve as a clearinghouse for receiving and providing information on the accuracy, completeness, and reliability of records used in matching programs;

"(F) provide interpretation and guidance to agency components and personnel on the requirements of this section with respect to matching programs;

"(G) review agency recordkeeping and disposal policies and practices with regard to matching programs to assure compliance with this section; and

"(H) review and coordinate privacy training programs for the agency's personnel.

"(4) Each Data Integrity Board shall maintain such staff as necessary to carry out its functions specified by this subsection. Such staff shall include persons designated by the head of the agency as responsible for implementation of this section.

"(5) The Director of the Office of Management and Budget shall annually consult

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date in a report to the Congress the information contained in the reports from the various Data Integrity Boards under paragraph (8)(D)."

Subsection (a) of section 553a of title 5, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (8),

(2) by striking out the period at the end of paragraph (7) and inserting in lieu thereof a semicolon, and

(3) by adding at the end thereof the following new paragraphs:

"(A) the term 'matching program'—

"(A) means any computerized comparison of—

"(A) two or more automated systems of records or a system of records with a set of non-Federal records for the purpose of—

"(i) establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements, by applicants, recipients, beneficiaries, or participants for, or providers of services with respect to, financial assistance or payments under Federal benefit programs, or

"(ii) recouping payments or delinquent debts under such Federal benefit programs, or

"(B) two or more automated Federal personnel or payroll systems of records or a system of Federal personnel or payroll records with a set of non-Federal records, but does not include—

"(i) matches performed to produce aggregate statistical data without any personal identifiers,

"(ii) matches performed to support any research or statistical project, the specific data of which cannot be used to make decisions concerning the rights, benefits, or privileges of specific individuals,

"(iii) matches performed by a source agency in which no records are matched outside such source agency or any component thereof, unless those matches involve a comparison of the source agency's personnel or payroll records with the records of a Federal benefit program administered by that agency,

"(iv) matches performed subsequent to the initiation of a specific law enforcement investigation by an agency or component thereof, which performs as its principal function any activity pertaining to the enforcement of criminal laws, for the purpose of gathering evidence for a prospective law enforcement proceeding against named individuals,

"(v) matches of tax information pursuant to section 6103(d) of the Internal Revenue Code of 1986, or

"(vi) matches performed to produce background checks for security clearance of Federal personnel;

"(9) the term 'recipient agency' means any agency, or contractor thereof, receiving records contained in a system of records from a source agency for use in a matching program;

"(10) the term 'non-Federal entity' means any State or local government, or agency thereof, partnership, corporation, association, or public or private organization receiving records contained in a system of records from a source agency for use in a matching program;

"(11) the term 'source agency' means any agency or any State or local government, or agency thereof, which discloses records contained in a system of records to be used in a matching program.

"(12) the term 'Federal benefit program' means any program administered by the Federal Government, or any agent thereof, providing cash or in-kind assistance in the

form of payments, grants, loans, or loan guarantees to individuals; and

"(13) the term 'Federal personnel' means officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve Components), individuals entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits)."

The PRESIDING OFFICER. The question is on agreeing to the committee amendment.

The committee amendment was agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. SYMMS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

COMPUTER MATCHING AND PRIVACY PROTECTION ACT OF 1987

Mr. LEVIN. Mr. President, I am co-sponsor and strong supporter of the Computer Matching and Privacy Protection Act of 1987, S. 496. This bill is before the Senate for final passage. It has received the unanimous support of the nine members of the Subcommittee on Oversight of Government Management which reported it, and has been approved without dissent by the Government Affairs Committee. The bill has also managed to satisfy a host of Government and private groups whose positions on computer matching range from violently opposed to violently in favor. It has managed this feat by successfully balancing competing concerns for efficiency, privacy and fairness.

I commend my colleague, Senator COHEN, for finding the common ground among these groups and developing this worthwhile piece of legislation. I know he has devoted considerable time to this project which also reflects the excellent work of his staff. I want to thank Senator COHEN, chairman of the Governmental Affairs Committee, and Senator ROTH, ranking Republican, for their support and expeditious handling of this bill. Their bipartisan effort to bring this measure to the floor is welcome and certainly helps the bill's prospects for enactment into law.

The Computer Matching and Privacy Protection Act creates a limited but reasonable statutory scheme which permits Federal agencies to engage in computer matching but requires them to proceed in ways which avoid a myriad of known problems. These problems include inaccurate databases, high error rates in "raw hits," data exchanges which threaten privacy rights, poor controls over records, and due process disasters which arise when needed Government benefits are wrongfully cut off due to computer foul-ups.

In our modern age, government computers store enormous amounts of information about individuals. Because of their record-searching capabilities,

these computers have also become powerful tools to uncover hidden irregularities or program fraud. Computer matching programs, in particular, are designed to rapidly compare collections of data to crosscheck various facts. Such data comparisons, if properly managed, can be effective and efficient means of identifying potential problems.

At the same time, however, computer matching programs must be recognized as producing high error rates. Mistakes result from reliance on outdated or incorrect data, computer operators who mistakenly enter wrong information and faulty programs. Moreover, unrestricted matching projects threaten the privacy rights of individuals by making it possible for the Government to compile detailed computer files on individuals or to engage in improper release or use of personal information.

The bill before you today creates the necessary controls to ensure that computer matching's benefits are not offset by its potential problems. In essence, it forces Federal agencies to plan carefully for the matches they want to initiate. The bill requires participating agencies to enter into a "matching agreement" for each project, setting out the goals to be achieved, the records to be matched, and the procedures to be followed in conducting the match and using the data. The bill also requires participating agencies to create internal "Data Integrity Boards" to approve matching agreements, analyze the costs and benefits of matching programs, and implement the relevant statutory guidelines and privacy protections. Most importantly of all, the bill prohibits an agency from terminating any person's benefits or otherwise taking adverse action, without first verifying the relevant matching data and providing the person with a chance to respond.

These controls are comprehensive but flexible, permitting agencies to tailor their matches to their needs while requiring them to think through protections for the individuals involved.

Again, I commend Senator COHEN for his continuing efforts in this important area, and I am happy to join him in this bill.

Mr. ROTH. Mr. President, I am pleased to support passage of S. 496, the Computer Matching and Privacy Protection Act of 1987.

Automated data processing equipment, if used wisely and fairly, can assist Federal agencies in assuring that benefits of Federal programs go to those who are in fact eligible.

As we struggle to reduce the enormous annual Federal budget deficit, we have to consider reducing the level of Federal spending. But, as I said yesterday in connection with the introduction of legislation, S. 1244, to collect on defaulted student loans from

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doctors who had National Health Service Corps (NHSC) scholarships.

Before we reduce services or benefits to those presently entitled, we must assure that we are doing everything possible to eliminate program mismanagement, fraud, and abuse.

Computer matching is a tool which can help to eliminate program mismanagement, fraud, and abuse. It was a computer match performed by the Department of Health and Human Services which showed the extent to which doctors who had defaulted on NHSC scholarships were receiving Medicare and Medicaid payments from the Federal Government in excess of the amounts owed on their scholarship.

S. 496 permits computer matching subject to necessary safeguards which will prevent computer matches, themselves, from fostering mismanagement of agency programs by improperly terminating Federal benefits to those properly entitled.

This legislation has been thoroughly considered over the past several Congresses and merits enactment.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (S. 496), as amended, was passed as follows:

S. 496

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Computer Matching and Privacy Protection Act of 1987".

SEC. 2. MATCHING AGREEMENTS.

(a) IN GENERAL.—Subsection (b) of section 552a of title 5, United States Code, is amended—

(1) by striking out "or" at the end of paragraph (11),

(2) by striking out the period at the end of paragraph (12) and inserting in lieu thereof, "or"; and

(3) by adding at the end thereof the following new paragraph:

"(13) to a recipient agency or non-Federal matching entity pursuant to a written matching agreement under subsection (c) of this section."

(b) MATCHING PROGRAMS.—Section 552a of title 5, United States Code, is amended—

(1) by redesignating subsections (c), (p), and (q) as subsections (r), (s), and (t), respectively; and

(2) by inserting after subsection (n) the following new subsections:

"(o) MATCHING AGREEMENTS.—Prior to disclosing any record which is contained in a system of records to a recipient agency or non-Federal matching entity for use in a computer matching program, a source agency and the recipient agency or non-Federal matching entity shall enter into a written agreement specifying—

"(1) the justification, purpose, and legal authority for conducting the program;

"(2) a description of the records that will be matched, including each data element that will be used, the approximate number of records that will be matched, and the projects starting and completion dates of the matching program;

"(3) procedures for notifying upon application and periodically thereafter—

"(A) applicants for and recipients of financial assistance or payments under Federal benefit programs; and

"(B) applicants for and holders of positions as Federal personnel,

that any information provided by such applicants, recipients, and holders may be subject to verification through matching programs.

"(4) procedures for verifying information produced in such matching program as required by subsection (p);

"(5) procedures for retention and destruction of records created by such matching program;

"(6) procedures for ensuring the administrative, technical, and physical security of the records matched and the results of such programs;

"(7) prohibitions on duplication and redisclosure of records provided by the source agency within or outside the recipient agency or the non-Federal matching entity, unless authorized by the source agency with the terms of the authorization;

"(8) procedures governing the use of the records provided by the source agency for use in a matching program including procedures governing return to the source agency or destruction of the records used in such program; and

"(9) information on assessments that have been made on the accuracy of the records that will be used in such matching program.

"(p) VERIFICATION AND OPPORTUNITY TO CONTEST FINDINGS.—(1) In order to protect any individual whose records are used in matching programs, no recipient agency, non-Federal matching entity, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program to such individual, or take other adverse action against such individual as a result of information produced by such matching programs, until such agency or entity has independently verified such information. Subject to the requirements of this subsection, such independent verification may be satisfied by verification requirements governing such Federal benefit program.

"(2) Independent verification required by paragraph (1) shall include verification of—

"(A) the amount of the asset or income involved;

"(B) whether such individual actually has or had access to such asset or income for such individual's own use; and

"(C) the period or periods when the individual actually had such asset or income.

"(3) No recipient agency, non-Federal matching entity, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program to any individual described in paragraph (1), or take other adverse action against such individual as a result of information produced by a matching program, until such individual has been notified by such agency or entity of its findings and has been given an opportunity to contest such findings. Such opportunity may be satisfied by notice, hearing, and appeal rights governing such Federal benefit program.

"(q) SANCTIONS.—Notwithstanding any other provision of law, no source agency

may disclose any record which is contained in a system of records to a recipient agency or non-Federal matching entity for a matching program if such source agency has reason to believe that the requirements of subsection (p) and any matching agreement entered into pursuant to subsection (c) are not being met by such recipient agency or entity."

SEC. 3. NOTICE OF MATCHING PROGRAMS.

(a) NOTICE IN FEDERAL REGISTER.—Subsection (e) of section 552a of title 5, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (10),

(2) by striking out the period at the end of paragraph (11) and inserting in lieu thereof, "and"; and

(3) by adding at the end thereof the following new paragraph:

"(12) If such agency is a recipient agency or a source agency in a matching program with a non-Federal matching entity, with respect to any establishment or revision of a matching program, at least 30 days prior to conducting such programs, publish in the Federal Register notice of such establishment or revision."

(b) REPORT TO CONGRESS AND OFFICE OF MANAGEMENT AND BUDGET.—

(1) IN GENERAL.—Subsection (r) of section 552a of title 5, United States Code, as redesignated by section 2(b)(1) of this Act, is amended by striking out "system of records" or matching program."

(2) CLERICAL AMENDMENT.—The heading of such subsection (r) is amended by inserting "OR PROGRAMS" after "SYSTEMS".

SEC. 4. DATA INTEGRITY BOARD.

Section 552a of title 5, United States Code, as amended by section 2(b)(1) of this Act, is amended by adding at the end thereof the following new subsection:

"(u) DATA INTEGRITY BOARDS.—(1) Every agency conducting or participating in a matching program shall establish a Data Integrity Board to oversee and coordinate among the various components of such agency the agency's implementation of this section.

"(2) Each Data Integrity Board shall consist of senior officials designated by the head of the agency, including any senior official designated by the head of the agency as responsible for implementation of this section, and the inspector general of the agency, if any. The inspector general shall not serve as chairperson of the Data Integrity Board.

"(3) Each Data Integrity Board shall perform the following functions:

"(A) review, approve, and maintain all written agreements for receipt or disclosure of agency records for matching programs to ensure compliance with subsection (c), and all relevant statutes, regulations, and guidelines;

"(B) review all matching programs in which the agency has participated during the year, either as a source agency or recipient agency, determine compliance with applicable laws, regulations, and agency agreements, and assess the cost-benefits of such programs;

"(C) review all recurring matching programs in which the agency has participated during the year, either as a source agency or recipient agency, for continued justification for such disclosures and for compliance with applicable laws, regulations, and agency agreements, and assess the cost-benefits of such programs;

"(D) compile an annual report to the head of the agency and the Office of Management and Budget on the matching activities of the agency, including—